

## **ARTICLE 28 - BOARDS OF ADJUSTMENT**

(As Amended 10/12/1999 via BOS Resolution No. 104-99; 9/18/2000 via BOS Resolution No. 78-00, 3/11/2002 via BOS Resolution 16-02)

### **Section 2801 -- Creation and Membership.**

Pursuant to A.R.S. 11-807, there shall be one or more Boards of Adjustment. Each board shall have jurisdiction in all unincorporated areas in which the Zoning Ordinance has been applied. Each board shall be composed of not less than three and not more than five members and shall include at least one member from each supervisorial district in which the Zoning Ordinance has been applied. Each member shall be a resident and taxpayer of the unincorporated area of the supervisorial district from which the member is appointed.

Members of each Board of Adjustment shall be appointed by the Board of Supervisors for staggered terms of four years and shall be eligible for reappointment. The Board of Supervisors may remove any member for good cause after a public hearing. Vacancies shall be filled for the unexpired term of the member whose position has been vacated.

### **Section 2802 -- Powers and Duties.**

Each Board of Adjustment shall have only those powers and duties prescribed by A.R.S. 11-807 and the Zoning Ordinance, which are as follows:

1. Interpretations. The board may interpret the Zoning Ordinance when the meaning of any word, phrase or section is in doubt, when there is a dispute between a citizen and the Director of Development Services, or when the location of a district boundary is in doubt.
2. Variances. The board may grant variances from the terms of the Zoning Ordinance concerning the construction or placement of buildings and structures associated with permitted uses when, due to peculiar conditions, a strict interpretation would work an unnecessary hardship, if in granting the variance the general intent and purposes of the Zoning Ordinance will be preserved. "Peculiar conditions" must relate to the property on which the use is proposed and shall include exceptional narrowness, shallowness or shape, unusual topographic features, or other extraordinary features of the property or its surroundings which would result in unnecessary hardship for the owner if the Zoning Ordinance were strictly applied. No variance shall be granted if the hardship has been self-imposed by the owner or is a matter of mere inconvenience or personal preference. In granting a variance, appropriate conditions to preserve the intent and purposes of the Zoning Ordinance may be prescribed. A variance shall not be granted so as to allow a use not permitted by the regulations applicable to the zoning district in which the property is located.
3. Use Permits. The board may grant use permits as permitted by the regulations applicable to the zoning district in which the property is located. No use permit shall be granted unless the board finds that the use and the manner of conducting it (including any associated buildings or structures) will be consistent with the intent and purposes of the Zoning Ordinance and will not be detrimental to persons residing or working in the vicinity, to adjacent property or the neighborhood in general, or to the public welfare. In granting a use permit, appropriate conditions to preserve the intent and purposes of the Zoning Ordinance may be prescribed.

(including, without limitation, the acquisition of right-of-way for street widening purposes in accordance with the recommendations of the Public Works Department if it appears that the use would increase traffic congestion). Unless otherwise stated on the permit, a use permit shall be permanent and shall run with the land.

### **Section 2803 -- Meetings and Rules.**

Meetings of each Board of Adjustment shall be held at the call of the Chairman as necessary for the transaction of business. All meetings shall be held in accordance with the Arizona Open Meeting Law, A.R.S. 38-431 et seq. Each board shall publish agendas and keep minutes of its proceedings and actions in accordance with the Arizona Open Meeting Law. Each board shall elect its own officers, which shall include at least a Chairman and Vice Chairman, and may adopt rules or procedures for its proceedings. The Chairman, or in his absence the Vice Chairman, may administer oaths and compel the attendance of witnesses. A copy of each resolution, variance, permit, interpretation or other action of each board shall be filed in the office of the Director of Development Services.

### **Section 2804 -- Applications.**

1. Variances and Use Permits. An application for a variance or use permit shall be submitted to the Director of Development Services on a form approved by the Director. The application shall be accompanied by:
  - a. An accurate site plan and description of the property, detailed description of the proposed use, preliminary floor plans and elevations of all proposed buildings, and an estimate of the valuation of the proposed construction.
  - b. Satisfactory evidence of the applicant's ability and intention to proceed with construction in accordance with the plans within six months after the variance or use permit is granted.
  - c. Reasons for requesting the variance or use permit.
2. Interpretations. An application for an interpretation of the Zoning Ordinance shall be submitted to the Director of Development Services in the form of a letter identifying the section of the ordinance for which the interpretation is requested and explaining how the applicant believes the section should be interpreted.
  - a. If the application involves a dispute with the Director, the letter shall also explain the Director's interpretation and how it differs from the applicant's. In such cases, the application shall be filed within 30 days after the applicant has received the Director's interpretation in writing. The filing of the application shall stay (postpone) any further action based on the Director's interpretation unless the Director certifies in writing to the Board of Adjustment that a stay would cause imminent peril to life or property; in such cases, further action shall not be stayed unless the applicant obtains an injunction from a court of competent jurisdiction.
3. In all cases, the Director shall review the application and promptly transmit copies to the members of the Board of Adjustment. If there is more than one board, applications shall be assigned on a rotating basis.

**Section 2805 -- Fees.**

1. Variances and Use Permits. The fees for Variances and Use Permits shall be in accordance with a schedule of fees adopted by the Board of Supervisors.
2. Interpretations. There shall be no fee for filing an application for an interpretation.

**Section 2806 -- Public Hearings and Notice.**

1. Variances and Use Permits. Upon receipt in proper form of an application for a variance or use permit, the Board of Adjustment shall hold a public hearing after giving notice thereof at least fifteen days in advance by posting the subject property and mailing notice by first-class mail to the applicant, and to the owners of record of all parcels physically adjoining the subject property and all parcels separated from the subject property by a public road.
2. Interpretations. Upon receipt in proper form of an application for an interpretation, the Board of Adjustment shall hold a public hearing after giving notice thereof at least ten days in advance by posting the subject property and mailing notice by first-class mail to the applicant.

**Section 2807 -- Expiration of Variances and Use Permits.**

A variance or use permit shall automatically expire if substantial construction, in accordance with the plans for which the variance or permit was granted, has not been completed within one year from the date on which the variance or permit was granted. If an appeal is filed in accordance with Section 2808, this time period shall be tolled while the appeal is pending.

**Section 2808 -- Appeals.**

Any person aggrieved in any manner by an action of a Board of Adjustment may within 30 days appeal to the Navajo County Superior Court, and the matter shall be heard de novo as appeals from courts of Justices of the Peace. A copy of the appeal document as filed in the Superior Court, or a separate notice of appeal, shall be served on the Director of Development Services within the same 30-day period by personal service or by mail. Personal service includes delivery to a responsible person in the Department of Development Services at its office in Holbrook. Service by mail is complete on mailing.